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In re Application of	:	
OSTGAARD	:	
Application No.: 09/486,549	:	DECISION ON
PCT No.: PCT/NO98/00232	:	
Int. Filing Date: 05 August 1998	:	PETITION UNDER
Priority Date: 27 August 1997	:	
Attorney Docket No.: 3111-24	:	37 CFR 1.137(b)
For: SAFETY BOX/INCINERATION CONTAINER	:	
FOR USED SYRINGES	:	

This decision is in response to applicants' submission filed 06 April 2004.

### **BACKGROUND**

On 05 August 1998, applicants filed international application PCT/NO98/00232, which claimed a priority date of 27 August 1997. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 18 March 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 08 January 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 27 February 2000.

On 25 February 2000, applicants filed a TRANSMITTAL LETTER (FORM PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, an authorization to charge the U.S. Basic National Fee to Deposit Account No. 50-0951.

On 25 February 2000, applicants filed a second TRANSMITTAL LETTER (Form PTO-1390) for entry into the national stage in the United States which was also accompanied by, *inter alia*, an authorization to charge the U.S. Basic National Fee to Deposit Account No. 50-0951.

On 23 May 2000, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form DO/EO/905) indicating, *inter alia*, that the declaration submitted 25 February 2000 did not comply with 37 CFR 1.497(a)-(b) and that thus a new declaration was required.

On 07 July 2000, applicants submitted a communication stating that "two separate applications" for U.S. patent were filed on 25 February 2000: one in a package having Express Mail Label No. EE683174140US;<sup>1</sup> and the other having Express Mail Label No. EE683174153US.<sup>2</sup> The communication states that according to the two return post cards for each of these "two respective applications", both applications have been assigned the same serial no. 09/486,549. The communication then asks for the status and correct serial number for these "two separate patent applications" based on the assumption that the two separate packages could not have been assigned the same serial number.

On 25 September 2000, applicants submitted a response to the NOTIFICATION OF MISSING REQUIREMENTS, which was accompanied by, *inter alia*, a declaration of the inventor.

On 07 February 2001, the USPTO mailed a Notification indicating that since only one national stage of a PCT application is permitted, it was proper to place both sets of papers filed 25 February 2000 in one application file. The Notification also indicated that the declaration filed 25 September 2000 complied with 37 CFR 1.497(a)-(b) and that the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date had been charged to Deposit Account No. 50-0951. Finally, the Notification indicated that the application would be accorded a 35 U.S.C. 371(c) date of 25 September 2000.

On 14 April 2003, the USPTO mailed a Notification indicating that the application was abandoned as to the United States of America for failure to pay the basic national fee by thirty months. Specifically, it was noted that an authorized user of the Deposit Account was not listed in the submission filed 25 February 2000. The Notification vacated the portions of the NOTIFICATION mailed 07 February 2001 indicating that the application would be accorded a 35 U.S.C. 371(c) date of 25 September 2000 and that the surcharge under 37 CFR 1.492(e) was charged to deposit account 50-0951 as well as the NOTIFICATION OF MISSING REQUIREMENTS mailed 23 May 2000.

On 12 May 2003, the USPTO mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application is abandoned as to the United States of America for failure to pay the basic national fee by thirty months and that the user of the deposit account is not listed as an authorized user.

On 06 April 2004, applicant submitted the instant "PETITION FOR REVIVAL OF AN

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<sup>1</sup>The submission filed 07 July 2000 incorrectly identifies this Express Mail Label No. as EEG83174140US.

<sup>2</sup>The submission filed 07 July 2000 incorrectly identifies this Express Mail Label No. as EEG683174153US.

APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R.  
§1.137(b)".

**DISCUSSION**

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicant submitted the basic national fee on 06 April 2004.

As to item (2), applicant submitted the petition fee on 06 April 2004.

As to item (3), the required statement has been provided.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

**CONCLUSION**

The petition under 37 CFR 1.137(b) is **GRANTED** for the reasons set forth above.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application in accordance with this decision.



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